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IN THE
Supreme Court of the United States

October Term, 1945

INDIANAPOLIS GLOVE COMPANY,
a Corporation,

Petitioner,

v.

CHESTER BOWLES, *Administrator,*
Office of Price Administration,
Respondent.

No. 617

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR SEVENTH CIRCUIT AND
BRIEF IN SUPPORT THEREOF.

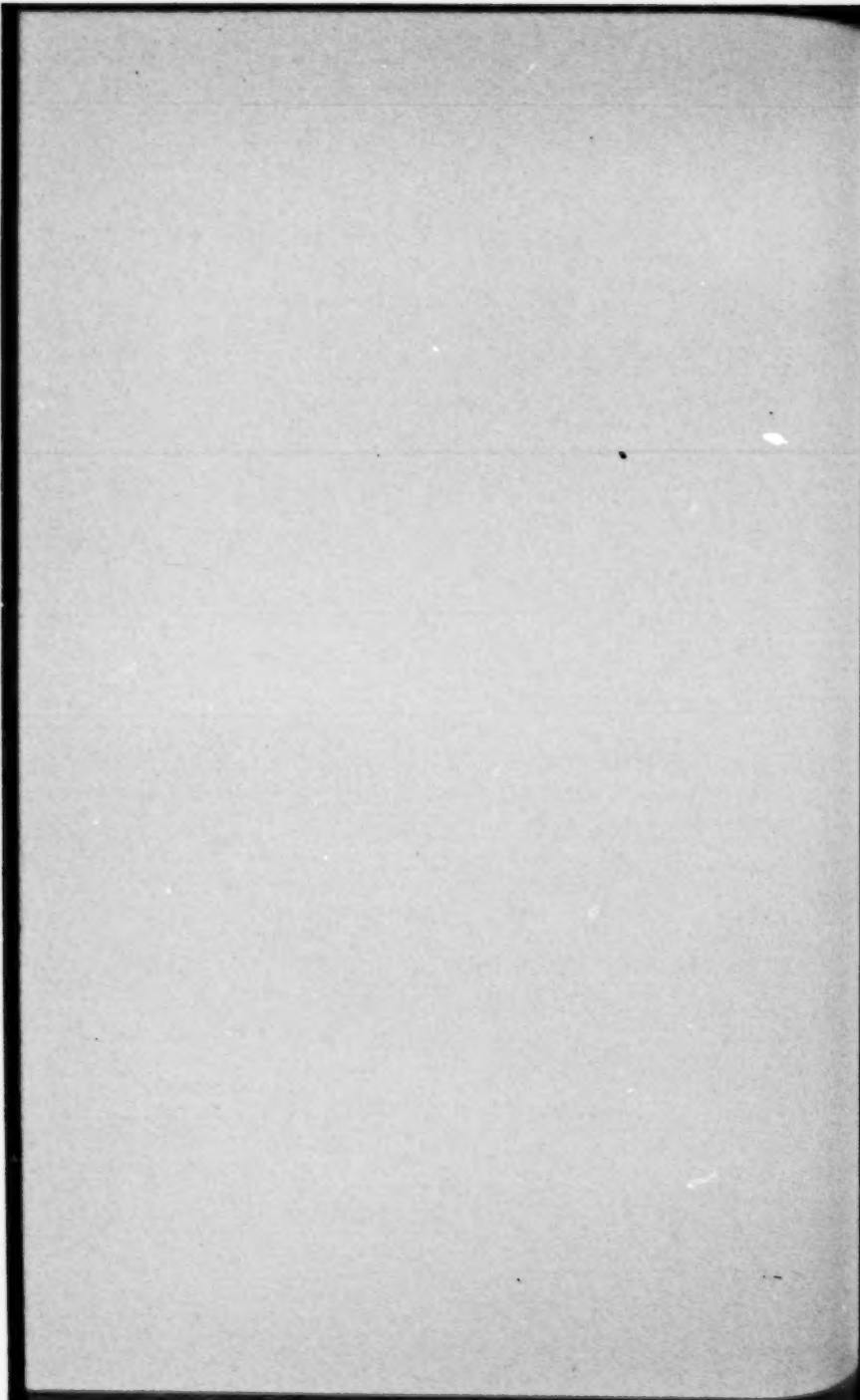
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TO THE HONORABLE, THE SUPREME COURT
OF THE UNITED STATES:

Indianapolis Glove Company, a corporation, respectfully
petitioning, shows the Court:

I.

SUMMARY STATEMENT OF MATTERS INVOLVED.

A. NATURE OF THE ACTION AND DECREES BELOW.

This suit was commenced by the predecessor in office
of the present respondent, who was substituted subsequent

to his assumption of office (R. 20, 21), against petitioner Glove Company seeking to recover treble damages for sales at allegedly over ceiling prices for a one-year period commencing October 6, 1942 (R. 2, 3).

Trial was had by the Court without the intervention of a jury. The trial court made special findings of fact (R. 137-182) and stated thereon its conclusion of law that the law was with the petitioner and that respondent take nothing either by way of damages or penalty ⁽¹⁾ (R. 182).

Judgment was entered for petitioner. (R. 182.) Respondent appealed to the Circuit Court of Appeals for the Seventh Circuit. (R. 183.) The cause was reversed and remanded (R. 203).

The opinion of the Court (R. 194-202) held:

(a) The decision in the case of *Bowles v. Seminole Rock and Sand Co.* (decided June 4, 1945, 89 L. Ed. Adv. Op. 1186) conclusively established the rule of law against petitioner's contention ⁽²⁾ as to its maximum prices for its work gloves (R. 197, 201).

(b) The good faith of petitioner (which was stipulated) was not an available defense to it (R. 198-199).

(c) The conduct of his representatives had not estopped respondent from recovery for the period of time petitioner was induced by such conduct to renew its deliv-

(1) Pursuant to joint request of parties, the trial court reserved the issue of measure of damages. (R. 19.)

(2) As hereafter pointed out more fully, some of the pertinent facts in the instant case vary widely from those in the *Seminole* case. This Court also had before it in the *Seminole* case only Maximum Price Regulation 188, the language of which varies from that of General Maximum Price Regulation and Amendments 23 and 38, involved here.

eries at prices now claimed by respondent to be over-ceiling (R. 200, 201).

(d) Petitioner was not denied an opportunity to contest the validity of the applicable price regulation as construed by respondent in violation of petitioner's rights under the Fifth Amendment to the Constitution of the United States (R. 200).

II.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended. (28 USCA 347 (a), C 426, 48 Stat. 926.)

The opinion of the Circuit Court of Appeals was filed on August 3, 1945 (R. 194). On August 18, 1945, within the time permitted, petitioner's petition for rehearing was filed (R. 203) and was denied on August 28, 1945, without opinion (R. 223) and decree thereafter entered (R. 223).

This petition was filed before the expiration of three months from August 28, 1945.

III.

STATEMENT OF THE FACTS.

A substantial portion of the facts was stipulated. The stipulation was adopted as part of the Court's special findings of fact. (R. 137-178.) Facts were also found in addition to those stipulated. (R. 178-182.)

Petitioner is engaged in the manufacture and sale of work gloves. Its sales in the main are to wholesalers, jobbers and, in certain cases, to chain stores and industrial plants. (Stip. ⁽³⁾ II, R. 137, 138; offered R. 24; R. 93.) It has but one price to all of its purchasers for all orders placed with it for the same item or model during any particular period of time, with the exception of incidental sales in broken lots. (Stip. XXVI, R. 150.)

On December 8, 1941, petitioner changed and made effective a basic price list for its work gloves. (Stip. IX, R. 145.)

On March 21, 1942, approximately two months before the promulgation of the General Maximum Price Regulation, petitioner adopted and made effective a new basic price list (Stip. Ex. B, R. 145, 159), which made a uniform and general increase in the prices of all the items or models of petitioner's work gloves.

This increase was made necessary because of increased costs of material and labor entering into the manufacture of petitioner's products. (Finding No. 3, R. 178; R. 93, 94.)

On March 21, 1942, petitioner had valid and binding contracts with approximately 800 of its customers (on which there were approximately \$1,000,000 worth of gloves still undelivered) at its December 8, 1941, and prior prices, due to the practice in the glove business of contracting for delivery many months in the future. (R. 93, 94.) Petitioner on and after March 21, 1942, sold and delivered during the month of March, 1942, many of its work gloves at the prices set forth in its new basic price list of March 21, 1942. (Stip. XXII, R. 149; Stip. XXXV, R. 150; R. 103, 104, 105.) After

(3) Stip.—Stipulation of Parties.

March 21, 1942, it continued to deliver certain of its work gloves at prices lower than those fixed in the basic price list of March 21, 1942, solely because it was obligated to do so on account of such prior commitments. (Finding No. 2, R. 178; R. 91, 94.)

Certain of petitioner's models of gloves were not delivered during March, 1942, at any price.

On April 28, 1942, respondent's predecessor issued General Maximum Price Regulation, effective May 11, 1942. (Sec. 1499.23 GMPR; 7 Fed. Reg. 3156.) It was subsequently amended, including Amendment 23, August 20 and Amendment 38, December 4, 1942. This Regulation did not in and of itself fix a schedule or list of specific dollar and cents maximum prices. It was therefore incumbent upon petitioner in the first instance to ascertain at what dollar and cent prices its work gloves could be offered, sold and/or delivered. (Stip. VIII, R. 145.)

All sales of gloves made by petitioner since March 21, 1942, have been made at the following prices:

(a) For gloves listed on the basic price list of March 21, 1942, the prices on that basic price list; and

(b) For other gloves not specifically appearing on that basic price list, at prices determined by applying to the prices on the basic list trade differentials, well-known and established in the trade for more than 25 years, based on the size, weight and style of work gloves. (Finding No. 1, R. 178; Stip. XX, XXI, R. 149.)

Petitioner in the sale and delivery of its work gloves at all times here involved acted in entire good faith and in the

belief that its sales and deliveries of work gloves were made in pursuance of the applicable regulations of the Office of Price Administration. (Finding No. 12, R. 181; Stip. XIV, R. 147; R. 99, 102.)

In January, 1943, a representative of the O.P.A. made an investigation of petitioner for the purpose of determining whether petitioner had violated the regulations of O.P.A., and at the conclusion of the investigation advised officers of petitioner that in his opinion petitioner was complying with such regulations. (Finding No. 8, R. 179, 180; R. 108-114.)

No claim was ever asserted by respondent or his predecessors in office, or by the O.P.A., that petitioner was violating the maximum price regulation until March 2, 1943. (Stip. XVIII, R. 147; R. 96.)

After petitioner received the letter dated March 2, 1943, and on March 4, 1943, it stopped shipments of its gloves (R. 96, 97) and entered into discussions with representatives of the O.P.A. in which petitioner insisted that the proper interpretation of the General Maximum Price Regulation permitted and authorized it to sell all of its items or models of gloves appearing upon its basic price list of March 21, 1942, at the prices therein set forth or for any glove not appearing thereon at prices determined by the application thereto of well-known and established trade differentials based on the size, weight and style of said gloves. (R. 97.)

When the representatives of the local office of the O.P.A. were advised of petitioner's contentions, they presented the question to the Cleveland office of O.P.A. by a telephone call in the presence of petitioner's officers and told these officers

that the Cleveland office would take the matter up with the Washington office. (R. 97.)

Thereafter, on March 18, 1943, the local office of O.P.A., with the knowledge, consent and approval of the Cleveland and petitioner believes the Washington offices (R. 164, para. 6) of the Office of Price Administration, wrote a letter to petitioner in which it stated, among other things:

"It has been the understanding and position of your Company that your March 21st List Prices were your maximum prices under the General Maximum Price Regulation and from the 21st of March, 1942, up until March, 1943, all sales and deliveries have been made on the basis of this list except those in fulfillment of orders ante-dating March 21st, 1942.

* * * * *

"We have sought but not yet obtained a clarification of your position from the Regional and National Offices. We have been advised, however, that information is being assembled by the National Office for use in preparation of a specific regulation establishing maximum prices for work gloves applicable to the entire industry. Believing that the present situation constitutes a serious impediment to the production of goods and materials essential to the prosecution of the war, we see no alternative other than to advise you to proceed with shipments on the basis of your March 21, 1942, list prices pending a definite ruling and decision by the Cleveland or Washington Offices. It is understood that this does not legalize or validate the prices charged from May 11, 1942, the date the General Maximum Price Regulation became effective, up to the present time." (Stip. XI, R. 145, 146; Finding 8, R. 179-180.)

After receipt of the above letter petitioner resumed the

sale and delivery of its gloves at the prices fixed in its basic price list of March 21, 1942, and the differentials hereinbefore referred to in the good faith belief that it had the right to do so under the applicable regulations and relying on the representations and permissions contained in said letter. (Finding No. 9, R. 180; Stip. XIV, R. 147; R. 98.)

The Office of Price Administration, with full knowledge of the belief and contentions of petitioner that it had a right to sell its work gloves at the prices established in its basic price list of March 21, 1942, or by the application of the differentials hereinbefore referred to, and with full knowledge that the letter of March 18, 1943, was outstanding, never advised or stated to petitioner in any way between March 18, 1943, and August 28, 1943, that its position was wrong or the letter incorrect. (R. 98.)

On August 28, 1943, petitioner received another letter from the Indianapolis office of O.P.A. attempting to withdraw for the future its said letter of March 18, 1943, and the permission therein contained (Stip. Ex. C, R. 163-170; offered R. 24), and thereupon petitioner immediately ceased to sell or deliver any controversial item or model of gloves and has not, since August 28, 1943, to the date of the commencement of this action below, sold or delivered any item, number or model of glove at prices which under the contentions of the O.P.A. would not be a correct ceiling price. (Finding No. 10, R. 180, 181; R. 98.)

If respondent's contentions are well taken petitioner could sell approximately one-half of its models of gloves at its March 21, 1942, basic prices and approximately one-half of its models of gloves at the earlier and superseded prices of December 8, 1941, and earlier price lists. The result from a business standpoint would be that petitioner

would be unable to sell any of its models of gloves at the March 21, 1942, basic price list, and the prices which petitioner could charge commercially for all of its gloves would be "rolled back" to the price level of December, 1941, and earlier. (R. 90, 91; Finding No. 4, R. 179.)

In March, 1942, petitioner had more than 500 items, numbers or models of work gloves in its line, and it was not commercially possible for it to sell and deliver either at the old or new prices all or a majority of such items, numbers or models during the month of March, 1942 (Finding No. 5, R. 179), because of the large number of models offered by petitioner and the practice in the glove business of entering into contracts for future delivery. (Stip. Ex. B, R. 159; XXII, R. 149; XXIII, XXIV, XXV, R. 150; R. 93.)

Recovery of *treble damages* is sought (R. 2, 6, 12, Stip. I, R. 137) for certain sales made by petitioner from October 6, 1942, to October 6, 1943. (R. 2.)

None of the sales in respect of which respondent seeks a recovery in this action were made to purchasers for use or consumption other than in the course of trade or business. (Stip. VI, R. 145.)

Neither respondent, the United States, any department or agency thereof, Lend-Lease or any foreign government purchased any of the gloves in respect of which respondent seeks a recovery. (Stip. VII, R. 145.)

Between March 4, 1943, and March 18, 1943, petitioner made no sales or deliveries of any gloves whatsoever. (Finding No. 8, R. 179, 180; Stip. XIII, R. 146.)

From March 18 to August 28, 1943, petitioner sold and

delivered its gloves in reliance on the March 18, 1943, letter from O.P.A. (Findings 9 & 10, R. 180, 181.)

From August 28, 1943, to the date of the commencement of this action below, petitioner made no sales of any models of its gloves at a price which, under the contentions of the O.P.A., would not be the correct ceiling price. (Finding No. 10, R. 180, 181.)

IV.

QUESTIONS PRESENTED.

Upon the record and the opinion of the Circuit Court of Appeals, the following important questions are presented:

1. Whether the Circuit Court of Appeals erred in holding that the decision of this Court in *Bowles, Adm. v. Seminole Rock and Sand Co.* (89 L. Ed. Adv. Op. 1186) conclusively established the rule of law against petitioner's contention as to its maximum prices for work gloves. (R. 197.) In the instant case the General Maximum Price Regulation and Amendments 23 and 38 thereof are involved. In the *Seminole* case only Maximum Price Regulation 188 was involved. (89 L. Ed. Adv. Op. 1187; footnote 9, p. 1190.) The language of the two regulations is not the same. The pertinent facts are materially different in the two cases.

2. Whether the Circuit Court of Appeals erred in holding that the good faith provision of Section 205(d) of the Emergency Price Control Act of 1942, as amended (50 USCA App. 925(d)), was unavailable to petitioner as a defense (R. 198) even though petitioner's good faith was stipulated (Stip. XIV, R. 147) and even though the trial court

found as a fact, based on uncontradicted evidence, that petitioner acted in good faith and in the belief that its sales and deliveries of work gloves were made "in pursuance of applicable regulations of the Office of Price Administration." (Finding No. 12, R. 181; R. 99.)

3. Whether the Circuit Court of Appeals erred in holding that a letter to petitioner from the Indianapolis office of O.P.A., written with the knowledge and approval of the Cleveland Regional Office and, petitioner believes, the Washington office of O.P.A., advising petitioner, after it had previously ceased deliveries of its work gloves "to proceed with shipments on the basis of your March 21, 1942, list prices," did not estop respondent from claiming a penalty for at least the period petitioner relied upon the permissions contained in the letter. (R. 200.)

4. Whether the petitioner has been denied due process of law, as guaranteed by the Fifth Amendment to the Constitution of the United States, in not being afforded an adequate opportunity to contest the validity of the regulation as construed by respondent. (R. 200.)

V.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals has misapplied the ruling of this Court in the case of *Bowles v. Seminole Rock and Sand Co.* (89 L. Ed. Adv. Op. 1186) in deciding a question of substance in the instant case, where the facts are materially different and where a different regulation and amendments thereto are involved, thus deciding a question

of federal law, viz: the construction of the General Maximum Price Regulation and Amendments 23 and 38 thereto, which has not been, but should be, settled by this Court.

2. The scope and meaning of Section 205(d) (50 USCA 925(d)), the good faith provision of the Emergency Price Control Act of 1942, as amended (50 USCA 901-943, 56 Stat. 23, 767; 58 Stat. 632), which is an important question of federal law decided by the Circuit Court of Appeals, and which has not been, but should be, decided by this Court.

3. The acts of the representatives of respondent in inducing petitioner by letter to resume deliveries of its work gloves at March 21, 1942, prices should be held to work an equitable estoppel against respondent and preclude a taking of petitioner's property, since respondent is authorized to make representations (50 USCA 902(a)), did make them, and petitioner has relied on them to its harm.

4. Petitioner has been denied due process of law, as guaranteed by the Fifth Amendment to the Constitution of the United States (which this Court will correct (*Yakus v. United States*, 321 U. S. 432, 434)), in this:

(a) Except for a letter dated March 2, 1943, by which petitioner was advised that in the opinion of the Indianapolis office of O.P.A. the prices which it then was charging and receiving for certain of its work gloves were in excess of the maximum prices established pursuant to the Act as amended (Stip. XI, R. 146), petitioner was not notified by O.P.A. until receipt of the letter dated August 28, 1943 (Stip. Ex. C, R. 163-170) of the construction respondent placed on the regulation as to the maximum prices to be charged for certain models of its work gloves. Nor did petitioner know until the August 28, 1943, letter that respondent's construc-

tion was that certain style numbers of its gloves even though some differed only in color were not to be considered the same commodity in applying the pricing provisions of the regulation.

(b) In less than 60 days, the then statutory time within which to file a protest, after receipt by petitioner of the August 28th letter, and on October 6, 1943, this suit was commenced.

(c) Petitioner did not have an opportunity initially to contest the validity of the regulation within the then 60 days' statutory limit because petitioner did not know until much more than 60 days after May 11, 1942, the effective date of the regulation, that the respondent construed the regulation differently than petitioner had.

(d) Petitioner has not had an adequate opportunity to contest respondent's construction of the General Maximum Price Regulation, as amended, as applied to it and as given in the letter of August 28, 1943, prior to the commencement of this action by respondent on October 6, 1943.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be named therein a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 8692, Chester Bowles, Administrator, Office of Price Administration vs. Indianapolis Glove Company, and that the decree of said Circuit Court of Appeals in said cause be reversed by this

Court, and that petitioner have such other and further relief in the premises as to this Court may seem just.

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